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To: Examiner Tai T. Nguyen/USPTO

Fax: 571-273-8300

From: William A. Munck, Esq.

Time: 10:55 AM

Date: February 7, 2006

Client/Matter: ILIF01-00103

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U.S. Serial No. 10/057,739 filed January 25, 2002

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DOCKET NO. ILIF01-00103
Customer No. 23990

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : MICHAEL L. LEHRMAN ET AL.
Serial No. : 10/057,739
Filed : January 25, 2002
For : SYSTEM AND METHOD FOR ANALYZING ACTIVITY
OF A BODY
Group No. : 2632
Examiner : Tai T. Nguyen

MAIL STOP AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF TRANSMISSION BY FACSIMILE

Sir:

The undersigned hereby certifies that the following documents:

1. Petition from Requirement for Restriction Under 37 C.F.R. §1.144

relating to the above application was faxed to (571) 273-8300 on February 7, 2006.

Date: 2/7/06

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Sir:

**PETITION FROM REQUIREMENT FOR
RESTRICTION UNDER 37 C.F.R. § 1.144**

The Applicants hereby respectfully submit this Petition From Requirement for Restriction under 37 C.F.R. § 1.144. The Examiner entered a Restriction Requirement in an Office Action dated October 13, 2004. The Applicants made an election with traverse, and requested the Examiner to reconsider the Restriction Requirement, in their Response to Restriction Requirement dated March 14, 2005. The Examiner made the Restriction Requirement final in an Office Action dated June 30, 2005.

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The Restriction Requirement characterized Claims 1-40 (Group I) as drawn to "a system for sensing dynamic and static accelerative phenomena" and Claims 41-73 (Group II) as drawn to "a system for sensing a body relative to a three dimensional frame of reference in environment." (Restriction Requirement, Page 2, Paragraph 1). The Applicants respectfully submit that the Restriction Requirement provides no factual basis for asserting either independence or distinctness of these claims. The Restriction Requirement makes the following statement:

The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as the system for sensing dynamic and static accelerative phenomena not using the system for sensing a body relative to a three dimensional frame of reference in environment of invention II; and invention II has separate utility such as the system for sensing a body relative to a three dimensional frame of reference in environment not using the system for sensing dynamic and static accelerative phenomena of invention I. See MPEP § 806.05 (d). (October 13, 2004 Restriction Requirement, Page 2, Paragraphs 2-3).

The Applicants respectfully traverse the Examiner's conclusion for the following reasons. Restriction is only proper where the claims are independent or distinct. MPEP § 806. In passing on questions of restriction, the claimed subject matter must be compared in order to determine distinctness and independence. MPEP § 806.01, p. 800-39.

The Restriction Requirement stated that "Inventions I and II are related as subcombinations disclosed as usable together in a single combination." The Applicants respectfully traverse this conclusion of the Examiner.

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Claim 1 is directed to a system as follows:

1. A system that evaluates body activity relative to an environment, said system comprising a processor that is associable with a sensor for sensing dynamic and static accelerative phenomena of said body, said processor operable to process said sensed dynamic and static accelerative phenomena as a function of at least one accelerative event characteristic and an environmental representation to thereby determine whether said evaluated body activity is within environmental tolerance.

Claim 41 is directed to a system as follows:

41. A system that evaluates movement of a body relative to an environment, said system comprising:

a sensor, associable with said body, that senses accelerative phenomena of said body relative to a three dimensional frame of reference in said environment, said sensor comprising a plurality of acceleration measuring devices; and

a processor, associated with said sensor, that processes said sensed accelerative phenomena of said body as a function of at least one accelerative event characteristic to thereby determine whether said evaluated body movement is within environmental tolerance, and to thereby determine whether said body has experienced dynamic acceleration due to external forces by subtracting a value of gravitation acceleration from the total acceleration experienced by said body.

A restriction requirement must provide the particular factual basis for asserting that restriction is necessary:

The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given. (MPEP § 816, p. 800-56 (8th ed. rev. 1 February 2003)).

The Restriction Requirement fails to provide such a factual basis (as opposed to a "mere statement of conclusion") indicating why the claims recite patentably distinct subcombinations – that is, a factual basis for asserting that: "Inventions I and II are related as subcombinations disclosed as usable together in a single combination." The Applicants

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respectfully submit that the invention as claimed in Claims 1-40 and the invention as claimed in Claims 41-73 are not subcombinations.

The system as claimed in Claim 1 senses accelerative phenomena in a sensor and processes the sensed accelerative phenomena in a processor. The processor of Claim 1 determines whether the body activity is within environmental tolerance.

Similarly, the system as claimed in Claim 41 senses accelerative phenomena in a sensor and processes the sensed accelerative phenomena in a processor. The processor of Claim 41 determines whether the body movement is within environmental tolerance.

Both the system as claimed in Claims 1-40 and the system as claimed in Claims 41-73 evaluate body movement relative to an environment using a sensor that senses accelerative phenomena and a processor that processes the sensed accelerative phenomena. Sensing dynamic and static accelerative phenomena, as claimed in Claims 1-40, does not provide separate utility from the system as claimed in Claims 41-73. Sensing accelerative phenomena of the body relative to a three dimensional frame of reference in the environment, as claimed in Claims 41-73, does not provide separate utility from the system claimed in Claims 1-40.

Therefore, the Applicants respectfully submit that it is clear that the Group I claims (Claims 1-40) and the Group II claims (Claims 41-73) are not related as subcombinations. Therefore, the Restriction Requirement accordingly has failed to establish that the system as claimed in the Group I claims and the system as claimed in the Group II claims are "subcombinations" usable together in a single combination.

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With respect to the Group I claims (Claims 1-40) and the Group II claims (Claims 41-73), the Restriction Requirement fails to satisfy any of the requirements for restricting the claims of the patent application.

Accordingly, the Applicants respectfully petition under 37 C.F.R. § 1.144 that the Restriction Requirement be withdrawn.

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SUMMARY

If any issue arises, or if the Examiner has any suggestions for expediting allowance of this application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at wmunck@davismunck.com.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: Feb. 7, 2005



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